

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 29-015-17-1-5-00855-18
Petitioners: Francis H. Jr. & Kelley R. Schaut
Respondent: Hamilton County Assessor
Parcel No.: 29-09-12-013-012.000-015
Assessment Year: 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their appeal with the Hamilton County Auditor on May 29, 2018. On June 22, 2018, the Hamilton County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners relief.
2. The Petitioners timely filed a Petition for Review of Assessment (Form 131) on August 2, 2018, with the Board and elected the Board's small claims procedures.
3. On December 19, 2018, the Board's administrative law judge (ALJ) Dalene McMillen held a hearing. Neither the Board nor the ALJ inspected the property.
4. Kelley Schaut appeared *pro se*. Attorney Marilyn Meighen appeared for the Respondent. Hamilton County Auditor's office employee Sadie Eldridge was sworn as a witness for the Respondent.¹

Hearing Facts and Other Matters of Record

5. The property under appeal is a single-family home located at 1002 Sunshine Court in Westfield.
6. The official record for this matter is made up of the following:
 - a. A digital recording of the hearing,
 - b. Exhibits:

¹ County Assessor Robin Ward and Lisa Johnson were present but not sworn to testify.

- Petitioner Exhibit 1: A copy of Francis & Kelley Schaut’s Indiana driver’s license and Hamilton County Auditor Real Property Department “Indiana Driver’s License Homestead Update” form (**marked confidential**),
- Petitioner Exhibit 2: Voter Registration Acknowledgement Notices for Francis & Kelley Schaut dated December 30, 2016, and March 13, 2017,
- Petitioner Exhibit 3: Veterans United Home Loans 2017 mortgage interest statement (**marked confidential**),²
- Petitioner Exhibit 4: Petitioners’ written statement regarding “Hearing on 2017 Homestead Exemption” dated December 18, 2018,³
- Petitioner Exhibit 5: Vectren statement dated February 8, 2017,
- Petitioner Exhibit 6: Indiana Farm Bureau Insurance statement dated November 11, 2016,
- Petitioner Exhibit 7: Duke Energy statement dated November 7, 2017,
- Petitioner Exhibit 8: Indiana Certificate of Vehicle Registration issued December 29, 2016.
- Respondent Exhibit A: Sales disclosure form dated October 17, 2016, (**marked confidential**),
- Respondent Exhibit B: “Property Tax Deductions – Notification” from Hamilton County Auditor to Francis & Kelley Schaut dated March 6, 2017,
- Respondent Exhibit C: Certified mail envelope and receipt,⁴
- Respondent Exhibit E: Claim for Homestead Property Tax Credits/Standard Deduction (Form HC10) dated May 29, 2018, (**marked confidential**),
- Respondent Exhibit F: Department of Local Government Finance (DLGF) memorandum “Frequently Asked Questions – Homestead Standard Deduction and Other Deductions” dated March 27, 2014, pages 1 and 9,
- Respondent Exhibit G: Indiana Code § 6-1.1-12-37(j).

- c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

² While the Petitioners did not request Petitioners’ Exhibits 1 and 3 to be marked confidential, the Board finds the information contained within these two exhibits to be confidential and therefore will treat these exhibits as confidential.

³ The Petitioners used the term “homestead exemption.” There is no exemption that exempts homesteads from taxation. The Board infers they are referring to the standard deduction for homesteads provided for under Ind. Code § 6-1.1-12-37, and will use the term “homestead deduction” hereinafter.

⁴ The Respondent did not submit a Respondent’s Exhibit D.

Summary of the Parties' Contentions

7. Summary of the Petitioners' case:
 - a. The Petitioners purchased the subject property on October 17, 2016. Because Mr. Schaut was a veteran, they were able to purchase the home with a United States Department of Veterans Affairs (VA) loan. The VA only allows an individual to have one property loan at a time. The subject property is their principal place of residence. In an effort to support this claim, they provided copies of their driver's licenses, voter registration notices, 2017 mortgage interest statement, home insurance bill, gas bill, electric bill and vehicle registration. *Schaut testimony; Pet'r Ex. 1-8.*
 - b. In April of 2017 the Petitioners received a letter from the Auditor's office regarding their homestead deduction. The letter requested proof of residency and copies of their Indiana driver's license by December 31, 2017. After the letter was received, Mrs. Schaut mailed copies of both Indiana driver's licenses and the Auditor's Indiana Driver's License Homestead Update form. She testified she placed the requested information in her mailbox. *Schaut testimony; Pet'r Ex. 1.*

8. Summary of the Respondent's case:
 - a. The Petitioners' 2017 homestead deduction was denied by Hamilton County because "she was unclear if the Petitioners met the residency requirement." When the Petitioners filed for the homestead deduction via their sales disclosure form, they provided their out-of-state driver's license. *Meighen argument (citing Ind. Code § 6-1.1-12-37(j); Eldridge testimony; Resp't Ex. A, G.*
 - b. The DLGF issued a memorandum on March 27, 2014, providing county auditors' guidance on how to determine if a property is a person's principal place of residence. According to this memorandum, the auditor may ask for proof, such as, Indiana income tax returns, voter registration and valid Indiana driver's license. In the normal course of business the Hamilton County Auditor will request proof of residency if she needs to determine eligibility. *Eldridge testimony; Resp't Ex. F.*
 - c. Residency verification is necessary in Hamilton County because many times the sales disclosure form incorrectly states a property is the individual's principal place of residence, when in fact it is a "second home." *Eldridge testimony.*
 - d. The Auditor's office sent a "Property Tax Deduction – Notification" by certified mail to the Petitioners on March 6, 2017, requesting Indiana driver's license numbers by December 31, 2017. After attempting delivery to the Petitioners three times, the certified letter was returned to the Auditor's office on April 4, 2017, as "unable to forward." The letter was then mailed out in April of 2017 to the Petitioners via first-class mail. The Auditor's office did not receive the letter back as undeliverable nor

did the Auditor receive the Petitioners' reply. As a result, the homestead deduction was removed for the 2017 assessment year. *Eldridge testimony; Resp't Ex. B, C.*

- e. On May 29, 2018, the Petitioners re-filed for their homestead deduction with the proper paperwork proving they are Indiana residents. *Eldridge testimony; Resp't Ex. E.*

Analysis⁵

9. Indiana Code § 6-1.1-12-37 provides a standard deduction from the assessed value for homesteads, which the statute defines as a dwelling that an individual owns and uses as his principal place of residence and up to one acre of surrounding land. Ind. Code § 6-1.1-12-37(a)-(c). At all times relevant to this appeal, the taxpayer had to apply for the deduction in one of two ways.⁶ First, he could file a certified statement with the county auditor on forms prescribed by the DLGF. Ind. Code § 6-1.1-12-37(e). The DLGF prescribed Form HC10 for that purpose. 50 IAC 24-4-2. A taxpayer had to complete Form HC10 within the calendar year for which the deduction was sought and file that form on or before January 5 of the immediately succeeding year. *Id.*; Ind. Code § 6-1.1-12-37(e). Alternatively, a taxpayer could use the sales disclosure form at the time of purchase to claim the deduction. *Id.*; Ind. Code § 6-1.1-12-44.
10. Here, the Petitioners applied for the homestead deduction using the sales disclosure form as allowed by 50 IAC 24-4-3 and Ind. Code § 6-1.1-12-44. The sales disclosure form was filed on October 19, 2016, with information from the Petitioners' Texas driver's license. There is no dispute the subject property meets the requirement to be a "homestead" as defined by Ind. Code § 6-1.1-12-37(a)(2) because it is the Petitioners' principal place of residence.
11. Sometime in 2017, the Auditor realized the Petitioners had not updated their homestead records by providing their new Indiana driver's license numbers. The Auditor attempted several times to obtain the information from the Petitioners, but they failed to respond by December 31, 2017. As a result, the Petitioners should not have received the homestead deduction because they did not submit the proper verification corroborating their residency.
12. Mrs. Schaut was issued an Indiana driver's license on December 29, 2016. Mr. Schaut was issued an Indiana driver's license on March 11, 2017. When the Petitioners received the letter requesting updated driver's license information, Mrs. Schaut testified she made copies and filled out the Auditor's Indiana Driver's License Homestead Update form and placed those items in her mailbox in April of 2017. The Auditor argues she never

⁵ Because the Petitioners only challenge was the homestead deduction, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden rests with the Petitioners.

⁶ Once the auditor grants the deduction, it carries forward and taxpayers need not reapply. *See* Ind. Code § 6-1.1-27-37(e); Ind. Code § 6-1.1-12-17.8.

received the information. The Indiana Tax Court has held that “the sworn testimony of a witness constitutes sufficient evidence to prove timely mailing.” *Indiana Sugars, Inc. v. State Bd. of Tax Comm’rs*, 683 N.E.2d 1383, 1387 (Ind. Tax Ct. 1997). Consequently, the Board finds the testimony of Mrs. Schaut to be credible evidence that she mailed the requested information.

13. The Respondent’s current position assumes the lack of an Indiana driver’s license *necessarily* establishes lack of the required residency. A county auditor has the authority to determine that a homestead deduction was given in error, and then recover any taxes lost as a result of that error. *See* Ind. Code § 6-1.1-12-37(f); Ind. Code § 6-1.1-36-17. However, a taxpayer may timely appeal an auditor’s action in revoking a homestead. The Respondent has not challenged the timeliness of this appeal. It is the taxpayer’s eligibility that controls. Because the Petitioners timely filed, the Respondent’s revocation cannot stand on appeal when eligibility is conceded. The purpose of the statute is to revoke ineligible homesteads. Having proved they are eligible and the subject property is their principal place of residence, the homestead deduction must be reinstated.

Conclusion

14. The Board finds for the Petitioners.

Final Determination

In accordance with these findings and conclusions, the Petitioners are entitled to a homestead deduction for the 2017 assessment year.

ISSUED: March 18, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>